

STATEMENT OF ROBERT BARACKER, DIRECTOR, SOUTHWEST REGIONAL OFFICE, BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS OVERSIGHT HEARING ON INDIAN RESERVATION ROADS AND THE TRANSPORTATION EQUITY ACT IN THE 21st CENTURY (TEA-21)

October 20, 1999

Good morning, Mr. Chairman and Members of the Committee. My name is Robert Baracker, the Director of the Bureau of Indian Affairs Southwest Regional Office. I serve as the designated Federal official for the TEA-21 Negotiated Rulemaking Committee. With me today is Leroy Gishi, the Division Chief for the Bureau of Indian Affairs (BIA) Transportation Program.

I am pleased to be here to provide you with an overview of the status of the BIA Indian Reservation Roads (IRR) program and the impact of the Transportation Equity Act of the 21st Century (TEA-21) on transportation programs for Indian people.

BACKGROUND

The IRR program was established on May 26, 1928, by Public Law 520, 25 USC 318(a). The Act authorized appropriations for survey, improvement, construction, and maintenance of IRR that were ineligible for Federal-aid highway funding. The partnership with the BIA and FHWA began in 1930 when the Secretary of Agriculture was authorized to cooperate with the State highway agencies and the Department of the Interior (DOI) in the survey, construction, reconstruction, and maintenance of IRR serving Indian lands.

The Federal-aid Highway Act of 1936, Public Law 686, Section 6, required that FHWA approve the location, type, and design of all IRR roads and bridges to be constructed using BIA funds. This requirement was also contained in Section 10(c) of the Federal-aid Highway Act of 1944, Public Law 521. The first BIA/FHWA Memorandum of Agreement was executed in 1946. In 1958, the laws related to highways were revised, codified, and reenacted as Title 23, USC by Public Law 85-767. The new title contained a definition of IRR and bridges and a section on IRR.

Between 1930 and 1982, Congress appropriated funds for the IRR in the Department of the Interior's (DOI) appropriations acts. Public Law 97-424, the Surface Transportation Assistance Act of 1982, incorporated the IRR program into the Federal Lands Highway Program (FLHP) and provided funding from the Highway Trust Fund. It also repealed Section 208 of Title 23. The law also made the IRR program subject to the other provisions of Title 23.

Under Title 23, the FHWA was required to (1) approve plans, specifications, and estimates (PS&E) for transportation projects, (2) monitor the work in progress, and (3) conduct a final inspection of the projects. Under 23 USC II 7, Certification Acceptance, the State highway agency and the BIA could get a waiver from PS&E approval and project monitoring.

In 1991, Congress enacted the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, Public Law 102-240. ISTEA made changes to the IRR program and created a set-aside of Highway Bridge Replacement and Rehabilitation Program funds for Indian reservation bridges.

With the enactment of the TEA-21, the IRR program was modified to include a Nationwide Priority Program for improving IRR deficient bridges, and a negotiated rule-making with Indian Tribal governments as required for IRR program procedures and the "relative need" funding formula. [I 115(b)] Tribes will continue to contract for IRR projects under the Indian Self-Determination and Education Assistance Act provisions. The one percent set-aside of Bridge Replacement and Rehabilitation program funds for deficient IRR bridges established in ISTEA were eliminated. In addition, IRR funds may be used for transit facilities within Indian reservations. [1115(d)]

IRR PROGRAM DESCRIPTION

The IRR program is authorized under the FLHP, 23 U.S.C. 204, and the use of IRR funds is also defined within 23 U.S.C. 204. The TEA-21 authorized funding level is \$275 million for each of fiscal years 1999 through 2003. The program is jointly administered by the BIA Division of Transportation (BIADOT) and the Federal Lands Highway (FLH) of the FHWA.

The purpose of the IRR program is to provide safe and adequate transportation and public road access to and within Indian reservations, Indian lands and communities for Native Americans, visitors, recreationists, resource users and others while contributing to economic development, self-determination and employment of Native Americans.

As of June 1999, the IRR system consisted of about 41,430 kilometers (25,700 miles) of BIA and Tribal owned roads and 41,270 kilometers (25,600 miles) of state, county and local government public roads and 1 ferry boat operation (Inchelium-Gifford Ferry of Washington).

From the \$275 million annual authorization, the FHWA reserves up to 1.5 percent for FHWA administration costs and \$13 million for the Nationwide IRR Bridge Program. The BIADOT and the FLH develop a plan for using the remaining funds. This plan includes operating expenses for the Federal Lands Highway Coordinated Technology Implementation Program (CTIP); the Local Technical Assistance Program (LTAP) centers for Tribal governments; and BIA administration (not to exceed 6 percent, as authorized in the annual DOI Appropriation Act). The BIADOT administers transportation planning studies for the reservations, bridge inspections, and pays for inventory updates, training, and atlas mapping. An additional 2 percent of the IRR funds are set-aside for transportation planning by Tribal governments.

The current joint BIA and FHWA approved formula is the Relative Needs allocation formula. The BIA distributes the construction funds to the 12 BIA Regional Offices. The formula is based on 20 percent population, 30 percent vehicle miles traveled (Average Daily Traffic x mileage), 50 percent cost-to-improve (the cost it would take to bring the road up to a given standard). This formula was approved for implementation after public notice and consultation with Tribes on a national level in 1993. In order to minimize the impact to Tribal projects, the formula was phased in over a 4-year

period, 1993 through 1996. This replaced an allocation formula used since 1970, which was based on 1/3 population, 1/3 land area, and 1/3 road mileage.

The Indian Tribal governments develop and submit a priority list of projects to the BIA Regional Office which includes a letter of approval or Tribal resolution. The BIA gathers these project lists and develops a minimum 3-year transportation improvement program (TIP) for IRR and Bridge Replacement funds. The BIA reviews, approves and submits these TIPs to the FLH for approval. The approved project list includes the eligible projects for funding. The majority of the IRR funds are spent improving the BIA and Tribal public roads. Through cooperative agreements with the states and counties, IRR funds are also spent on Tribally prioritized projects for improving other roads on the IRR system.

The design of projects is performed by the BIA, Tribal governments, other Federal agencies, consultants, or State and local governments. In FY 1995, about 35 percent of the IRR construction was performed by Indian Tribal governments under Public Law 93-638 contracts, approximately 40 percent were done by Buy-Indian Act contractors, and approximately 15 percent was performed using Indian labor under BIA force accounts. In FY 1998, the percentage of Public Law 93-638 contracts increased to 50 percent, while the work performed under the Buy-Indian Act contractors decreased to 13 percent and the BIA force account laborers increased to 29 percent. The remaining projects were constructed by highway contractors selected by other methods.

DESCRIPTION OF THE IRR MAINTENANCE PROGRAM

In 1951, Congress began appropriating general funds for the maintenance of BIA owned roads in the annual DOI appropriations acts. To comply with 23 USC 204, the DOI includes maintenance appropriations in their annual budgets. As a condition for the continuance of Federal Lands Highway funds (Highway Trust Funds) for improvements and in accordance with 23 USC 116, the BIA Regional and Agency Offices are responsible for proper maintenance of BIA roads (using DOI funds) to protect the public investment and provide safe transportation for Tribal members and the general public.

The BIA currently receives about \$25.5 million per year for maintenance. On average this amount is less than \$500 per mile of road. Comparable state agencies estimate the maintenance need at about \$4,000 to \$5,000 per mile. The lack of proper maintenance is becoming evident in the frequency of reconstruction activities because roads are deteriorating prematurely. The BIA estimates that \$100 million per year is needed to adequately maintain BIA owned roads. The maintenance funds are allocated to BIA Area Offices by formula. The actual maintenance activities are performed by BIA, Indian Tribal governments under Public Law 93-638 contracts, compacts, intergovernmental cooperative agreements, or by other methods.

TRANSPORTATION PLANNING

The key to the success of program delivery in recent years and the future is largely dependent on the transportation planning. Transportation planning on Indian reservations and lands is a cooperative effort involving Indian Tribal governments and the BIA. Transportation planning is the development

of strategies for the design, construction, operation, and maintenance of transportation facilities for moving people and goods in a village, town, pueblo, rancheria, city, borough, county, township, parish, metropolitan area, Indian reservation, State, multi-State region, or country. Through the transportation planning process Tribal governments have developed long-range transportation plans, prioritized projects, Transportation Improvement Programs, and updated their IRR inventory. In FY 1998, Tribal governments contracted 151 transportation planning projects.

PROJECT DEVELOPMENT

This functional area covers the scoping, development, review, and approval of projects identified on the 3-year IRR TIP. The BIA Regional Offices, in cooperation with Tribal governments, have the primary responsibility for the development of projects.

Project development is necessary to improve the condition of highway infrastructure and to improve safety, address environmental, archeological, and right-of-way concerns, ensure compliance with all Federal, State and Tribal statutes, and the engineering necessary to prepare Plans, Specifications and Estimate's for highway and bridge construction projects on the IRR system. In FY 1998, approximately 390 projects were undertaken by the BIA and Tribal governments at an estimated cost of \$230 million.

BRIDGES

The IRR bridges consist of bridges which are BIA owned and non-BIA owned. These bridges must be on public roads which meet the definition of an IRR. Most of the IRR bridges that are on or provide access to Indian reservations are owned or maintained by states, counties or local governments. There are 745 bridges owned and maintained by the BIA in 30 states.

The BIA-owned bridge maintenance is funded under the DOI appropriations and is included under the general heading of "maintenance." It is considered a line item along with road maintenance, snow removal, ferry boat service, and airstrip maintenance. All BIA bridges are inspected every 2 years by the BIADOT. All BIA bridge piers are inspected under water every 5 years.

The IRR Nationwide Priority Program of Bridges funding and HBRRP (repealed with the TEA-21 Restoration Act, July 24, 1998) funds can be used for the replacement or rehabilitation of IRR bridges that meet the eligibility criteria. From 1992 through 1998, approximately 170 IRR bridges have been replaced or rehabilitated.

PROGRAM ACCOMPLISHMENTS

Since the modern era of transportation development in Indian country, the Highway Trust funded IRR program has provided the basis for an ever growing need in Indian reservations, communities and lands across this country.

Since 1992 through 1997, the IRR program has built, reconstructed or improved on the average 200 miles of roads per year on or near Indian Reservations, villages and communities. During this same period, many bridges have been built, replaced or rehabilitated. As much as 50 percent of these bridges were part of cooperative agreements with State and local governments for bridges serving Indian communities and lands.

During this same period, as much as 94 percent of the available funds authorized have been directed toward the planning, design and construction of road projects. Through 1998, 77 percent of the funds authorized for the program are directed into the actual projects impacting Tribal priorities. According to the Federal Lands Highway program, this percentage is the highest of the federal land management agencies participating in the 23 USC programs.

These statistics are important when one considers the existing construction need inventory, which is estimated at \$6.6 billion. The construction need is the estimated cost to improve roads to an acceptable standard based on usage and capacity. Approximately two-thirds of the BIA road system are earth roads, of which 75 percent are unimproved earth roads. The remaining paved roads are reconstructed and resurfaced well in advance of their design life because of the lack of maintenance. Simply stated, we are reconstructing and resurfacing roads on an interval of 7-8 years when the norm should be 10-15 years.

TEA-21 OUTREACH MEETINGS

The United States Department of Transportation has successfully completed a series of TEA-21 national outreach sessions to consult with its partners and customers before the implementation of the majority of TEA-21. These national outreach sessions were scheduled from July through November of 1998 and conducted by Federal Land Highway staff in conjunction with the BIA Division of Transportation Office. In addition to the DOT outreach meetings, the BIA and InterTribal Transportation Association (ITA) held five regional town hall meetings on the implementation of TEA-21 as well as the transportation needs of Tribal governments into the 21st century. Each town hall meeting produced a consensus report that represented a statement by the participating Tribes and local/state transportation agencies on the needs and recommendations for transportation affecting Indian people. These town hall meetings conducted by the ITA were favorably received by Tribal representatives as a mechanism that provided them some ownership in defining their transportation concerns by consensus. These Tribal transportation town hall meetings were modeled after the New Mexico Town Hall meetings process. As a follow up to these meetings, ITA is working with those regions on an implementation plan. The ITA brought together the Tribal and non-Tribal governments in an effort to foster greater cooperation at the decision making level of Tribal government. They are to be commended for their leadership in the Tribal transportation arena.

REGULATORY NEGOTIATIONS WITH TRIBAL GOVERNMENTS

Regulatory Negotiations with Tribal governments on the establishment of a funding formula and program procedures. The TEA-21 highway reauthorization legislation was enacted on June 9, 1998. The Act included an increase in funding (\$1.6 Billion) for the IRR program. In addition, TEA-21 also

provided for the establishment of a funding formula and program procedures through a government-to-government negotiated rulemaking (Negotiated Rulemaking Act of 1990) process with Tribal governments.

On November 15, 1998, a National Informational Meeting on Section II 15 of the Transportation Equity Act for the 21st Century (TEA-21) was held in Albuquerque, NM. This informational meeting was one of the first outreach meetings of any public agency required by TEA-21. A Notice of Intent To Form a Negotiated Rulemaking Committee and Accept Applications for Membership Under Section II 15 of TEA-21 was announced shortly thereafter. Nominations were submitted by the Tribes within the 12 BIA Regions for consideration and appointment as committee members and alternates to the Secretary of the Interior. Nominations submitted by Tribes and appointed by the Secretary were published and a request for comments was issued. Committee Representation (29 Tribal representative, 13 Federal) consists of small, medium and large Tribes.

On March 16-18, 1999, the first meeting of the Committee was scheduled and held in Albuquerque, NM. In less than 8 months from the full enactment of TEA-21, the Negotiated Rulemaking Committee was fully assembled. Eight meetings have been held in various locations throughout the country. After 8 meetings, the committee has established a new time line for completing the formula and the program regulations by November 2000.

Four workgroups have been established by the Committee to accomplish the task of developing regulations and a funding formula. The workgroups are specifically addressing the funding formula; the technical and construction standards; policy, and delivery of services for the IRR program.

CONCLUSION

The challenges for the future of the IRR program will continue to be our ability to meet the IRR construction and backlog need. The IRR program will need to become a true multi-modal program to address all the needs of Indian Country. In conclusion, Mr. Chairman, I would like to share some success stories of the diversity of the IRR program and its implementation at the tribal level.

BIA FORCE ACCOUNT CONSTRUCTION

A part of the construction work performed includes government force account construction. The Force Account construction program provides another method of meeting the construction needs for Tribes in the Rocky Mountain Region of the BIA. Indian Reservation Roads funds made available in TEA - 21 have made a substantial impact in improving the transportation systems on reservations in Montana and Wyoming. In addition to constructing roads it employs Tribal members and provides construction skills development to the impacted Tribal governments.

The BIA Rocky Mountain Regional Office's Force Account Construction Program employs approximately 220 individuals and has a biweekly payroll of \$472,270.00. Although this fluctuates some in early spring and late fall, the majority of these employees realize several months of work during the construction season. This employment has had a substantial affect on the local

economy at the reservation level and plays a major roll in reducing the general assistance programs there. Additionally, it provides training, individual worker self-esteem and supports their tribal economy.

The BIA Rocky Mountain Region has the only force account paving operation in the BIA and annually paves 40 to 60 miles of road. The asphalt plant this construction season has completed projects on four reservations and has paved or overlayed 46 miles of road. In addition, 27 miles of rural roads, 14 miles of urban streets, 27 miles of curb and gutter, 27 miles of sidewalk and public driveways were constructed.

METLAKATLA ROAD CONSTRUCTION PROJECT

The Walden Point Road project for the Metlakatla Indian Community of Alaska consists of fourteen miles of roadway and several bridges that will cut across mountainous terrain and link the town of Metlakatla to the proposed ferry terminal point at the northern end of Annette Island. The ferry system is part of the State's Southeast Alaska Transportation Plan, which includes a provision of two new terminal facilities and a ferry boat. The project also includes the relocation of power facilities in conjunction with the road construction.

The completed project will provide economic opportunity to the Metlakatla Indian Community through the prospective sale of power to Southeast Alaska and by improving access to Ketchikan, the nearest port city and a major stopping point for cruise ships. The project is a model of inter-agency cooperation and is jointly operated by the Department of Defense (DOD), Western Federal Lands Highway Division (WFLHD) of the Federal Highway Administration, Metlakatla Indian Community, and the BIA. The Innovative Readiness Training Program under the DOD is providing the heavy equipment and active duty forces for road construction operations. The WFLHD is providing bridge design services for the project, while the BIA has provided the funding for the bridge design services and the work associated with the Archeological and NEPA processes. The funding within the IRR program is not adequate to accomplish this project alone. The participation of the other agencies is an example of the need for continued cooperation among federal agencies in the development of responsive IRR programs.

NAVAJO REGION ROADS PROGRAM

The transportation program at the Navajo Region of the BIA is unique in that it fully utilizes self-determination contracting, Buy-Indian Act contracting and BIA Force Account construction. For the period from 1992 to 1998, the Navajo Region in conjunction with the Navajo Nation utilized Public Law 93-638 in contracting road construction projects. Approximately 40 percent of the total program is contracted by the Navajo Nation, utilizing their construction enterprise and the Navajo Engineering and Construction Authority (NECA). Approximately 26 percent of the program performed under a government force account and the remaining 34 percent was accomplished through the Buy-Indian Act contracting method. The Navajo Region IRR program totals approximately \$60 million annually.

The number of Tribal members employed at the Regional office is about 320 engineering and construction inspection staff. An average of 100 Tribal members are employed annually for the force account operations. Under Buy-Indian Act contracting, approximately 10-20 individuals (generally Tribal) are employed depending upon the size of the projects. All together this represents a total Tribal work force of over 400 members.

EASTERN BAND OF CHEROKEE INDIANS HIGH PRIORITY PROJECT

The Eastern Band of Cherokee Indians (EBIC) have entered into an agreement with the State of North Carolina Department of Transportation to improve US 19 from Cherokee, NC to Maggie Valley, NC. This project was identified as a TEA-21 High Priority Project and is estimated to cost \$18 million. The Tribe is providing the 20 percent local match (\$3 million) along with the TEA-21 authorized \$15 million from the State of North Carolina to perform all the work associated with this improvement, including the widening, realignment and paving of US 19. The project will be phased in over a 4 year period, beginning this year. The EBIC has established a transportation department that is administering this project and is participating with the State of North Carolina in a project that impacts the quality of life of not only Tribal members but the traveling public. This is a tremendous example of the benefits of the flexibility of IRR funding and a Tribal government who has shown it's ability to assume the responsibility for their roads program.

RED LAKE BAND OF CHIPPEWA INDIANS SELF GOVERNANCE COMPACT

As part of the implementation of Title IV of the Indian Self-Determination and Education Act as amended. The Red Lake Band of Chippewa Indians proposed a pilot project to fully utilize self-governance compacting procedures and include their portion of the IRR program within their Annual Funding Agreement in FY 1999. This pilot is part of a comprehensive effort to have Tribal governments manage the effort to improve the condition of roads and bridges serving Indian lands. We recognize that transportation is key to improving the economic infrastructure in any community and that Tribes can reap the economic benefits of managing and performing the work themselves.

The BIA and the FHWA worked with the Red Lake Band of Chippewa Indians to develop a pilot agreement whereby the Tribe will assume the planning, design and construction work on their sections of the 50,000 mile Indian Reservation Road (IRR) system. The agreement will enable the Tribe to manage the \$2.2 million associated with their FY 1999 IRR program.

Thank you for allowing me to share these success stories with you today. I will be happy to answer any questions you may have.